

STANDARD TRADING CONDITIONS (1990 EDITION)
by
THAI INTERNATIONAL FREIGHT FORWARDERS ASSOCIATION
and
THAI AIRFREIGHT FORWARDERS ASSOCIATION

SPECIAL ATTENTION

The "Customer" 's attention is drawn to the clauses hereinbelow which exclude and/or limit the "Company" 's liability and/or those which require the "Customer" to indemnify the "Company" in circumstances specified therein, and the "Customer" shall hereby be deemed to expressly agree to such exclusion and/or limitation and/or indemnification.

PART I GENERAL CONDITIONS

DEFINITIONS

1. In these Conditions

(A)"Company" is the corporate member of the Thai International Freight Forwarders Association; and Thai Airfreight Forwarders Association.

(B)"Customer" means any "Person" at whose request or on whose behalf the "Company" provides a service;

(C)"Person" includes persons or any body or bodies, association or any juristic person;

(D)"Owner" includes the owner, shipper and consignee of the "Goods" and any other "Person" who is or may become interested in the "Goods" and anyone acting on their behalf;

(E)"Goods" includes the cargo and any container not supplied by or on behalf of the "company" in respect of which the "Company" provides a service;

(F)"Container" includes any container, trailer, pallet, transportable tank, flat, or any article of transport used to carry or consolidate "Goods" or any equipment connected thereto;

(G)"Dangerous Goods" includes goods which are of a dangerous nature, or may become dangerous, or are likely to cause injury to persons or properties and goods likely to harbour or encourage vermin or other pests;

(H)"Instructions" means a statement of the Customers' specific requirements;

(I)"Conditions" means the entire undertakings, terms, conditions and clauses embodied herein.

HEADINGS

2. Headings in these "Conditions" are for reference only.

APPLICATION

3. (A) Subject to sub-clauses (B) and (C) below, all and any services of the "Company" whether gratuitous or not are undertaken subject to these "Conditions" :-

(i) Part I shall apply to all such services;

(ii) Part II shall only apply to the extent that such services are provided by the "Company" as agent; and

(iii) Part III shall only apply to the extent that such services are provided by the "Company" as principal.

(B) If any legislation is compulsorily applicable to any business undertaken, these "Conditions" shall, as regards such business, be read as subject to such legislation and if any part of these "Conditions" be repugnant to such legislation to any extent such part shall, as regards such business, be overridden to that extent and no further, and nothing in these "Conditions" shall be construed as a surrender by the "Company" of any of its rights or immunities or as an increase of any of its responsibilities or liabilities under such legislation.

(C) Subject to sub-clause 3 (B) above, where a document bearing a title of FIATA Combined Transport Bill of Lading (FBL), or House Air Waybill (HAWB) issued subject to the current Standard Conditions governing FIATA Combined Transport Bill of Lading, or House Air Waybill and under ICC Uniform Rules for a Combined Transport Document, and being printed as such on the face of the document, or where a bill of lading (whether or not negotiable), or air waybill (Whether or not negotiable) or waybill is issued by or on behalf of the "Company" and

provided that the "Company" contract as carrier, the terms and condition embodied in such foregoing mentioned documents shall be paramount insofar as those terms and conditions are inconsistent with these "Conditions."

COMPANY'S GENERAL RESPONSIBILITIES

4. (A) The "Company" shall perform its duties with diligence, skill, judgement and care as reasonably required from its profession.

(B) Subject to clause 19 hereof, the "Company" shall carry out its services within a reasonable time.

(C) Subject to these "Conditions" and in particular to sub-clauses 4 (D) and (E) below, the "Company" shall take all reasonable steps to perform any of the "Customer" 's "Instructions" accepted by the "Company."

(D) If at any stage during its services the "Company" should reasonably consider that there is good reason in the "Customer" 's interests to depart from any of the "Customer" 's "Instructions", the "Company" shall be permitted to do so and shall not incur any additional liability in consequence of so doing.

(E) When using its discretion as permitted in these "Conditions", the "Company" shall do so with due regard to the interests of the "Customer".

5. If after a contract has been agreed, events or circumstances come to the attention of the "Company", which in the opinion of the "Company" make it wholly or in part impossible for the "Company" to fulfil its duties, it shall take reasonable steps to inform the "Customer" of such events or circumstances and seek further instructions.

RIGHT OF COMPANY

6. Except as otherwise agreed in writing between the "Company" and its "Customer", the "Company" shall be entitled to enter into contracts on behalf of the "Customer" and the "Customer" hereby expressly agrees thereto

(A) for the carriage of "Goods" by any route, means or person;

(B) for the storage, packing, transshipment, loading, unloading or handling of "Goods" by any person at any place whether on shore or afloat and for any length of time;

(C) for the carriage or storage of "Goods" in or on Containers" as the case may be or with other goods of whatever nature;

(D) for the performance of such acts as in the opinion of the "Company" may be necessary or incidental to the performance of the "Company" 's obligations for the interests of the "Customer".

7. The "Company" shall be entitled to perform any of its obligations herein by itself or by its parent, subsidiary or associated companies or by any other person, firm or company, and it shall be deemed that these "Conditions" shall be made for the benefits of any such parent, subsidiary or associated company, or any person, firm or company pursuant to Section 374 of the Civil and Commercial Code of Thailand.

8. The "Company" may at any time comply with the orders or recommendations given by any authority and the responsibility of the "Company" in respect of the "Goods" shall cease on the delivery or disposition of the "Goods" in accordance with such orders or recommendations.

9. If delivery of the "Goods" or any part thereof is not taken by the "Customer" or "Owner" at the time and place when and where the Company is entitled to call upon the "Customer" or "Owner" to take delivery thereof, the "Company" shall be entitled to store the "Goods" or any part thereof at the sole risk and expense of the "Customer."

10. (A) Notwithstanding clause 9 above, the "Company" shall be entitled at the expense of the "Customer" to dispose of (by sale or otherwise as may be reasonable in all the circumstances) "Goods", which are unable to deliver in accordance with "Instructions"

(i) on giving 21 days notice in writing to the "Customer" or where the "Customer" cannot be traced and reasonable efforts have been made to contact any parties who may reasonably be supposed by the "Company" to have any interest in the Goods; or

(ii) without notice "Goods" which have perished, deteriorated or altered, or are in immediate prospect of doing so in a manner which has caused or may be reasonably expected to cause loss or damage to third parties or to contravene any applicable laws or regulations.

(B) The net proceeds derived from such disposition and after deduction by the "Company" for any debts owing to it shall be returned to the "Customer."

11. The "Company" shall be entitled to retain and be paid all brokerages, commissions, allowances and other remunerations customarily retained by or paid to freight forwarders.

12. The "Company" shall have a lien on all "Goods" and related documents in its possession, custody or control for all sums due at any time from the "Customer" or "Owner", and shall be entitled to sell or dispose of such "Goods" or documents as agent for and at the expense of the "Customer" and apply the proceeds in or towards the payment of such sums upon giving 28 days' notice in writing to the "Customer", and where the "Goods" are liable to perish or deteriorate the "Company" 's right to sell or dispose of the "Goods" shall arise immediately upon any sum becoming due to the "Company" subject only to the "Company" taking reasonable steps to bring to the Customer's attention its intention of selling or disposing of the "Goods" before doing so.

OBLIGATIONS OF CUSTOMER

13. The "Customer" warrants to the "Company" that

(A) he is either the "Owner" or the authorised agent of the "Owner" of the "Goods" and that he is authorised to accept these "Conditions" as agent for and on behalf of the "Owner" of the "Goods";

(B) he has reasonable knowledge of matters affecting the conduct of his business, including but not limited to the terms of sale and purchase of the "Goods" and all other matters relating thereto;

(C) the description and particulars of the "Goods" are complete and correct;

(D) the "Goods", are properly packed and labelled, except where the "Company" has accepted instructions in respect of such services; and

(E) he shall warn the "Company" as to the nature of the "Goods" delivered which are liable to taint or affect other goods.

14. The "Customer" shall give sufficient and executable "Instructions".

SPECIAL INSTRUCTIONS REGARDING CERTAIN GOODS

15. (A) Unless otherwise previously agreed in writing, the "Customer" shall not deliver to the "Company" or cause the "Company" to deal with or handle "Dangerous Goods."

(B) If the "Company" agrees to accept "Dangerous Goods" and then in the opinion of the "Company" its agents or servants they constitute a risk to other goods, property, life or health they may without notice be destroyed or otherwise dealt with at the expense of the "Customer" or "Owner".

(C) If the "Customer" is in breach of sub-clause 15 (A) above, he shall be liable for all loss or damage whatsoever caused by or to or in connection with the "Goods" howsoever arising and shall defend, indemnify and hold harmless the "Company" against all penalties, claims, damages, costs and expenses whatsoever arising in connection therewith and the "Dangerous Goods" may without notice be destroyed or otherwise dealt with at the sole discretion of the "Company" or any other person in whose custody they may be at the relevant time.

16. (A) Except under special arrangement previously made in writing, the "Customer" shall not deliver to the "Company" or cause the "Company" to deal with species, currency notes, bank notes, bills, bonds, share, debentures, warrants, bullion, coin, precious stones, jewellery, valuables, antiques pictures, human remains, livestock or plants.

(B) If the "Customer" is in breach of sub-clause 16 (A) above, the "Company" shall be under no liability whatsoever for or in connection with such goods howsoever arising.

(C) The "Company" may at any time waive its rights and exemptions from liability under sub-clause 16 (A) above in respect of any one or more of the categories of goods mentioned herein or of any part of any category. If such waiver is not in writing, the onus of proving such waiver shall be on the "Customer".

17. (A) The "Customer" undertakes not to tender for transportation any "Goods" which require temperature control without previously giving written notice of their nature and particular temperature range to be maintained, and in the case of a temperature controlled "Container" stuffed by or on behalf of the "Customer" further undertakes that the "Container" has been properly pre-cooled or preheated as appropriate, that the "Goods" have been properly stuffed in the "Container" and that its thermostatic controls have been properly set by the "Customer".

(B) If the "Customer" is in breach of sub-clause 17 (A) above, the "Company" shall be under no liability for any loss, or damage arising from such non-compliance.

GENERAL INDEMNITIES

18.(A) The "Customer" and "Owner" shall defend, indemnify and hold harmless the "Company" against all liability, loss, damage, costs and expenses arising

(i) from the nature of the "Goods" unless caused by the "Company" 's negligence;

(ii) out of the "Company" acting in accordance with the "Customer" 's or "Owner" 's "Instructions"; or

(iii) arising from a breach of warranty or obligation by the "Customer" or arising from the negligence of the "Customer" or "Owner".

(B) Except to the extent caused by the "Company" 's negligence, the "Customer" and "Owner" shall be liable for and shall defend, indemnify and hold harmless the "Company" in respect of all duties, taxes, imposts, levies, deposits and outlays of whatsoever nature levied by any authority and for all payments, fines, costs, expenses, loss and damage whatsoever incurred or sustained by the "Company" in connection therewith.

(C) Advice and/or information, in whatever form it may be given, are provided by the "Company" for the "Customer" only and the "Customer" shall defend, indemnify and hold harmless the "Company" for all liability, loss, damage, costs and expenses arising out of any other person relying on such advice and/or information.

(D) (i) The "Customer" undertakes that no claim be made against any director, servant, sub-contractor or agent of the "Company" which imposes or attempts to impose upon any of them any liability whatsoever in connection with the "Goods", if any such claim should nevertheless be made, to indemnify the "Company" against all consequences thereof.

(ii) Without prejudice to the foregoing, all provisions provided in these "Conditions" apart from being entered between the "Company" and the "Customer" shall be for the benefit of every such director, servant sub-contractor or agent and they shall be entitled to take such benefit by virtue of Section 374 of the Civil and Commercial Code of Thailand.

(iii) The "Customer" shall defend, indemnify and hold harmless the "Company" from the against all claims, costs and demands whatsoever and by whomsoever made or preferred in excess of the liability of the "Company" under the terms of these "Conditions" and without prejudice to the generality of this clause. This indemnity shall cover all claims, costs and demands arising from or in connection with the negligence of the "Company", its directors, servants, sub-contractors or agents unless it has been caused by fraud or gross negligence of the directors, servants, sub-contractors or agents of the "Company".

(iv) In this clause, "sub-contractors" includes direct and indirect sub-contractors and their respective servants and agents.

GOODS AND SERVICES

19. Unless otherwise previously agreed in writing, the "Company" accepts no responsibility for departure or arrival dates of the "Goods".

20. Unless otherwise previously agreed in writing, instructions relating to the delivery or release of "Goods" against payment or against surrender of a particular document shall be in writing and the "Company" 's liability shall not exceed that provided for in respect of misdelivery of "Goods".

21. Except in accordance with "Instructions" previously received in writing and accepted in writing by the "Company", the "Company" shall not be obliged to make any declaration for the purposes of any statute, convention or contract as to the nature or value of any "Goods" or as to any special interest in delivery.

22. No insurance will be effected by the "Company" except upon express "Instructions" given in writing by the "Customer" and all insurances effected by the "Company" are subject to the usual exceptions and conditions of the policies of the insurance companies or underwriters taking the risk. Unless otherwise agreed in writing, the "Company" shall not be under any obligation to effect a separate insurance on each consignment but may declare it on any open or general policy. The "Company" is an agent in respect of the effecting of insurance and should the insurers dispute their liability for any reason, the insured shall have recourse against the insurers only, and the "Company" shall not be under any responsibility or liability whatsoever in relation thereto notwithstanding that the premium upon the policy may not be at the same rate as that charged by the "Company" or paid to the "Company" by its "Customers".

EXCLUSION AND LIMITATION OF LIABILITY

23. Except insofar as otherwise provided by these "Conditions", the "Company" shall not be liable for any loss or damage whatsoever arising from:-

(a) the act or omission of the "Customer" or "Owner" or any person acting on their behalf;

(b) compliance with the instructions given to the "Company" by the "Customer", "Owner" or any other person entitled to give them;

(c) insufficiency of the packing or labelling of the "Goods" except where such service has been provided by the "Company";

(d) handling, loading, storage or unloading of the "Goods" by the "Customer" or "Owner" or any person acting on their behalf;

(e) inherent vice of the "Goods"

(f) riots, civil commotions, strikes, lockouts, stoppage or restraint of labour from whatsoever cause;

(g) fire, flood or storm; or

(h) any cause which the "Company" could not avoid and the consequences whereof it could not prevent by the exercise of reasonable diligence.

24. Except insofar as otherwise provided by these "Conditions", the liability of the "Company" howsoever arising, and notwithstanding that the cause of loss or damage be unexplained, shall not exceed the following:-

(A) in respect of all claims other than those subject to the provisions of sub-clause (B) below, whichever is the least of

(i) the value of, or

(ii) Baht 65 per gross kilogramme of, the "Goods" lost, damaged, misdirected or misdelivered.

(B) In respect of claims for delay the amount of the "Company" 's charges in respect of the "Goods" delayed.

25. (A) Compensation shall be calculated by reference to the invoice value of the "Goods" plus freight and insurance if paid.

(B) If there be no invoice value for the "Goods", the compensation shall be calculated by reference to the value of such "Goods" at the place and time when they are delivered to the "Customer" or "Owner" or should have been so delivered. The value of the "Goods" shall be fixed according to the current market price, or, if there be no commodity exchange price or current market price, by reference to the normal value of goods of the same kind and quality.

26. By special agreement in writing and on payment of additional charges, higher compensation may be claimed from the "Company" not exceeding the value of the "Goods" or the agreed value, whichever is the lesser.

NOTICE OF LOSS, DAMAGE

27. (A) The "Company" shall be discharged of all liability unless notice of any claim is received in writing by the "Company" or its agent within 14 days after the date specified in sub-clause 27 (B) below, or within a reasonable time after such date if the "Customer" proves that it was impossible to so notify.

(B) (i) in the case of loss or damage to "Goods", the date of delivery of the "Goods"

(ii) in the case of delay or non-delivery of the "Goods", the date that "Goods" should have been delivered;

(iii) in any other case, the event giving rise to the claim.

GENERAL AVERAGE

28. (A) The "Customer" shall defend, indemnify and hold harmless the "Company" in respect of any claims of a general average nature which may be made on the "Company" and the "Customer" shall provide such security as may be required by the "Company" in this connection.

(B) For the purpose of this clause a claim of a general average nature means a claim derived from a general average act where any extraordinary sacrifice or expenditure is voluntarily and reasonably made or incurred in time of peril for the purpose of preserving the property imperilled in the common adventure.

PAYMENT

29. The "Customer" shall pay to the "Company" in cash or as agreed all sums immediately when due without deduction, deferment or set-off on account of any demand, claim or counterclaim.

30. When the "Company" is instructed to collect freight, duties, charges or other expenses from any person other than the "Customer", the "Customer" shall be responsible for the same on receipt of evidence of demand and non payment by such other person when due.

31. On all amounts overdue to the "Company", the "Company" shall be entitled to interest calculated at 15 per cent per annum during the period that such amounts are overdue.

MISCELLANEOUS

32. Any notice required in these "Conditions" if delivery is made either by hand or by post shall be deemed to have been given if it has been made to the address of the recipient of such notice last known to the "Company"

li) in the case of hand delivery, when delivered to any person at such place; and

(ii) in the case of delivery by post, within 3 days from the date of posting irrespective of whether the recipient is at such place or has moved to other place.

33. Every variation, alteration, cancellation or waiver of these "Conditions" shall become effective against the "Company" if it is in writing signed by authorized directors of the "Company"

34. The defences and limits of liability provided for by these "Conditions" shall apply in any action against the "Company" whether such action be founded in contract or tort.

JURISDICTION AND GOVERNING LAW

35. Any demand, claim or dispute arising out of or in connection with the services of the "Company" under these "Conditions" shall be subject to Thai law and the exclusive jurisdiction of the Civil Court, Bangkok Metropolis.

PART II: COMPANY AS AGENT

36. All services are provided by the "Company" as agents except in the following circumstances where the "Company" acts as principal:

(A) where the "Company" performs any carriage, handling or storage of "Goods" but only to the extent that the carriage is performed by the "Company" itself or its servants and the "Goods" are in the actual custody and control of the "Company";

(B) where prior to the commencement of the carriage of "Goods" the "Customer" in writing demands from the "Company" particulars of the identity, services or charges of persons instructed by the "Company" to perform part or all of the carriage, the "Company" shall be deemed to be contracting as a principal in respect of that part of the carriage in respect of which the "Company" fails to give such particulars demanded within 28 days of the "Company" 's receipt of such demand; or

(C) to the extent that the "Company" expressly agrees in writing to act as a principal.

37. Without prejudice to the generality of clause 36 above

(A) the charging by the "Company" of a fixed price for a service or services of whatsoever nature shall not in itself determine or be evidence that the "Company" is acting as an agent or a principal in respect of such service or services;

the supplying by the "Company" of their own or leased equipment shall not in itself determine

or be evidence that the "Company" in acting as an agent or a principal in respect of any carriage, handling or storage of "Goods";

(C) the "Company" acts as an agent where the "Company" procures a bill of lading or other document evidencing a contract of carriage between a person, other than the "Company", and the "Customer" or "Owner"; or

(D) the "Company" acts as an agent and never as a principal when providing services in respect of or relating to customs requirements, taxes, licenses, consular documents, certificates and other similar services.

38. (A) To the extent that the "Company" acts as an agent of the "Customer", the "Company" does not make or purport to make any contract with the "Customer" for the carriage, storage or handling of the "Goods" nor for any other physical service in relation to them and acts solely on behalf of the "Customer" in securing such services by establishing contracts with third parties.

(B)The "Company" shall not be liable for the acts and omissions of such third parties referred to in sub-clause 38 (A) above if it has acted in the manner required from its profession.

39.(A) The "Company" when acting as an agent has the authority of the "Customer" to enter into contracts on the "Customer" 's behalf and to do such acts so as to bind the "Customer" by such contracts and acts in all respects notwithstanding any departure from the "Customer" 's "Instructions".

(B)Except to the extent caused by the "Company" 's negligence, the "Customer" shall defend, indemnify and hold harmless the "Company" in respect of all liability, loss, damage, costs or expenses arising out of any contracts made in the procurement of the "Customer" 's requirements in accordance with sub-clause 39 (A) above.

40.Where there is a choice of rates according to the extent or degree of liability assumed by persons carrying, storing, handling the "Goods", no declaration of value where optional will be made unless otherwise agreed in writing.

PART III: COMPANY AS PRINCIPAL

41.To the extent that the "Company" contracts as principal for the performance of the "Customer" 's "Instructions", the "Company" undertakes to perform or in its own name to procure the performances of the "Customer" 's "Instructions" and subject to the provisions of these "Conditions" the "Company" shall be liable for the loss of or damage to the "Goods" occurring from the time that the "Goods" are taken into its charge until the time of delivery, and it shall be deemed to have taken the "Goods" into its charge when they have been received by the "Company" or have been released or handed over by the "Customer" or any person acting on behalf of the "Customer" to any person acting on behalf of the "Company" with any directions of the "Company" for the performance of the "Customer" 's "Instructions".

42.Notwithstanding other provisions in these "Conditions", if it can be proved where the loss of or damage to the "Goods" occurred, the "Company" 's liability shall be determined by the provisions contained in any international convention or national law, the provisions of which

(A)cannot be departed from by private contract, to the detriment of the claimant; and

(B)would have applied if the claimant had made a separate and direct contract with the actual provider of the particular service in respect of that service or stage of carriage where the loss or damage occurred and received as evidence thereof any particular document which must be issued if such international convention or national law shall apply.

43.Notwithstanding other provisions in these "Conditions", if it can be proved that the loss of or damage to the "Goods" occurred at sea or inland waterway and the provisions of clause 42 do not apply, the "Company" 's liability shall be determined by the Hague-Visby Rules contained in the Protocol of Brussels dated February 23, 1968.

44.If the "Company" acts as a principal in respect of a carriage of "Goods" by air, the following notice is hereby given:-

"If the carriage involves an ultimate destination or stop in a country other than the country of departure, the Warsaw Convention may be applicable and the Contracting governs and in most cases limits the liability of carriers in respect of loss of or damage to cargo. Agreed stopping places are those places (other than the places of departure and destination) shown under requested routing and/or those places shown in carriers' timetables as scheduled stopping places for the route. The address of the first carrier is the airport of departure."